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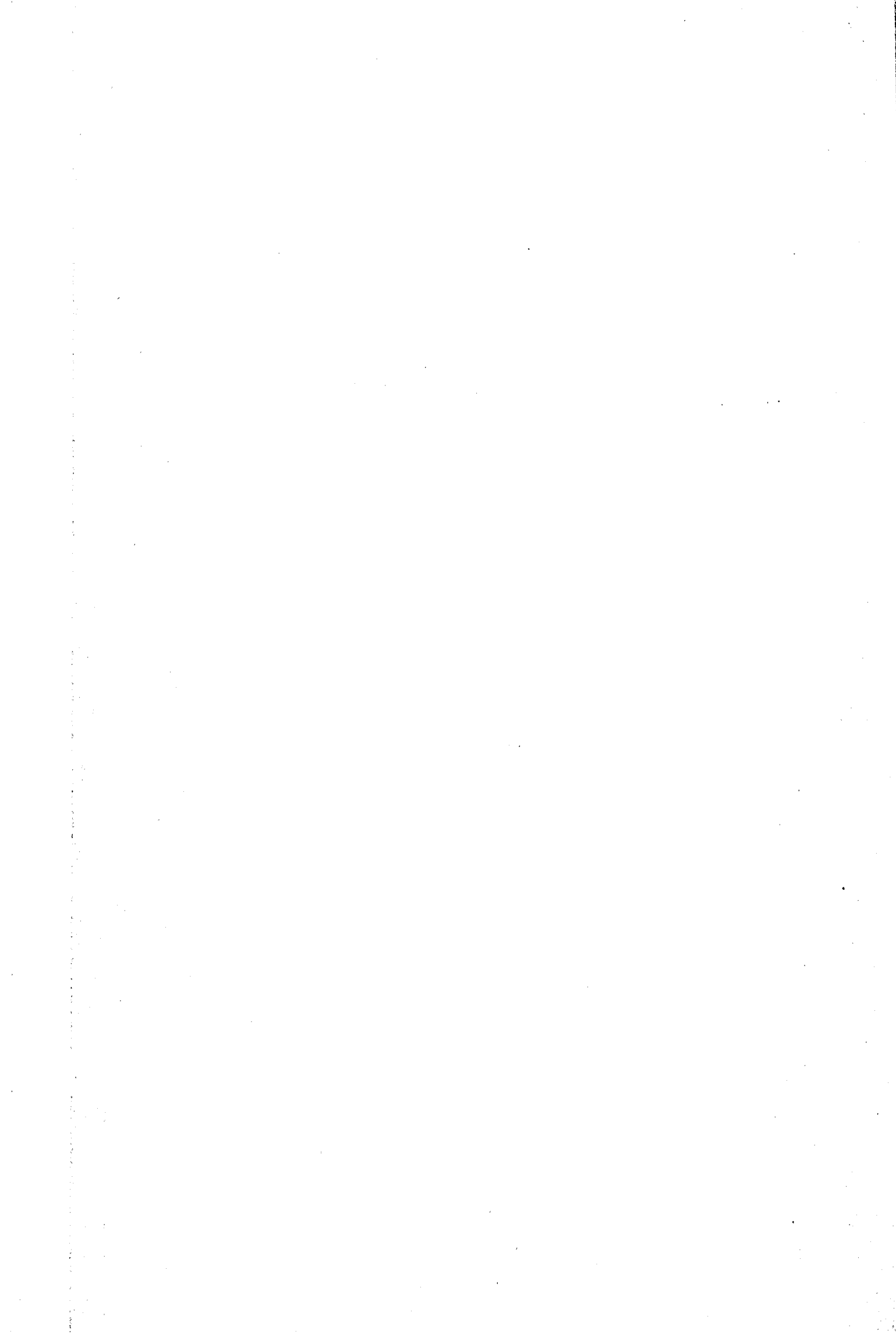
COMMITTEE OF GOVERNMENTAL EXPERTS ON AGENCY AND ON COMMISSION

DRAFT UNIFORM LAW

ON AGENCY OF AN INTERNATIONAL CHARACTER IN THE SALE AND
PURCHASE OF GOODS

(Geneva, December 1970)

Rome, January 1971



Chapter I

SPHERE OF APPLICATION AND DEFINITIONS

Article 1

1. The present Law shall apply to agency relationships connected with contracts for the sale or purchase of goods, when :

(a) The principal and the third party have their places of business in the territories of different States,

or

(b) The agent and the principal have their places of business in the territories of different States,

or

(c) The agent and the third party have their places of business in the territories of different States.

2. Where a party does not have a place of business, reference shall be made to his habitual residence.

Article 2

For the purpose of the present Law, an agent is any person who acts for or on behalf of another in contractual relations with a third party, whether he acts in his own name or in that of a principal.

Article 3

The present Law shall not apply to agency relationships connected with contracts for the sale or purchase of:

- a) stocks, shares, investment securities, negotiable instruments or money;
- b) any ship, vessel or aircraft, which is or will be subject to registration;
- c) electricity.

Article 4

The present Law shall apply to agency relationships regardless of the commercial or civil character of the parties or of the contract.]

Article 5

1. In case to which it applies, the present Law shall take the place of any law otherwise applicable.

2. Rules of private international law shall be excluded for the purpose of the present Law, subject to any provision therein to the contrary.

Article 6

Even where the present Law would otherwise apply:

- (a) the parties may choose another system of law to govern their mutual relations;
- (b) the parties may exclude or vary any provision in the present Law which has effect only upon their mutual relations.

Article 7

Even where the present Law would otherwise be inapplicable, the parties may choose it to govern their mutual relations. This choice, however, shall not affect the application of any mandatory provision of law which would have been applicable if the parties had not chosen the present Law [and which could not have been excluded by the choice of any other municipal Law].

Article 8

1. In their mutual relations, the principal and the agent shall be bound by any usage which they have expressly or impliedly made applicable to their contract and by any practices which they have established between themselves.

2. They shall also be bound by usages which reasonable persons in the same situation usually consider to be applicable to their contract. In the event of conflict with the present Law, the usages shall prevail unless otherwise agreed by the parties.

3. Where expressions, provisions or form of contract commonly used in commercial practice are employed, they shall be interpreted according to the meaning usually given to them in the trade concerned.

Article 9

Questions concerning matters governed by the present Law which are not expressly settled therein shall be settled in conformity with the general principles on which the present Law is based.

Chapter II

ESTABLISHMENT AND SCOPE OF AGENCY

Article 10

1. A contract of agency is subject to no special requirements as to form. It need neither be constituted nor evidenced by writing.

2. Where, however, a special requirement as to form is laid down by the law of the country where the agent is to carry out the act for which he has authority, the authorization is valid only if it is in accordance with this requirement.

Article 11

1. The authority of the agent may be express or may be implied from the circumstances.

2. The agent shall have the implied authority to perform all acts necessary to achieve the object for which the express authority was conferred.

3. Where the agent occupies a position with the consent of the principal, he shall have authority to perform those acts which are normally performed by a person in that position.

Article 12

1. Notwithstanding the terms of an agent's authorization, his power to act in any State is subject to the mandatory requirements of the law of that State.

2. If the law of the State where the agent is to act requires that his authorization be registered or published, that law shall determine the effect of any failure to register or publish it.

Article 13

1. Both principal and agent must possess legal capacity to enter into an agency contract.

2. Where an agent purports to enter into a contract for the purchase or sale of goods on behalf of a principal,

the acts of the agent shall bind the principal and the third party if the agent has sufficient understanding to accomplish such acts, even though he may not have the legal capacity to carry out the acts in his own name

the agent's lack of capacity shall not alone free the principal from liability to the third party.

Article 14

1. An agent may substitute another for himself only by the express authorization of his principal, or in the following cases:

(a) if substitution is allowed by the law of the State where the agent is to accomplish the act;

(b) if it necessarily follows from the nature of the act;

(c) if, as a result of some situation of fact personal to himself, the agent is no longer in a position to carry out the act, and the interests of the principal are such that that there should be no delay.

2. In cases where substitution is permitted the substitute shall become the direct agent of the principal and the original agent shall be liable to the principal only for lack of care in choosing or in instructing the substitute.

Article 15

If several persons have been authorized by the same document to carry out the same act in the name of the principal, it shall be presumed, unless the contrary is shown, that the act is to be carried out by them jointly.

Chapter III

RELATIONS BETWEEN THE PRINCIPAL AND THE AGENT

Article 16

The principal and agent shall act in good faith in their mutual relations. Neither party shall knowingly act in a manner inconsistent with the interests of the other. In particular, the principal shall not prevent the agent from earning his commission or other remuneration and the agent shall not, without the consent of the principal, buy on his own account the particular goods which he is to sell on behalf of the principal nor sell on his own account the particular goods which he is to buy on behalf of the principal.

Article 17

1. The agent shall be bound to perform what he has undertaken with all the skill and care reasonably to be expected of an agent in the same situation, he shall follow the specific instructions of the principal.

2. The agent shall keep the principal informed of his operations and shall furnish him with an account, including a financial account, of his operations at reasonable intervals or whenever requested to do so by the principal.

Article 18

1. The agent shall take care of what has been received by him under the agency contract and the principal may require immediate delivery of everything, including sums of money, which he has a right to claim from the agent.

2. The agent shall present any claim required and, in general, do whatever may be necessary to preserve all rights and remedies for the benefit of the principal.

3. If the goods received by the agent are in danger of perishing or of being subject to some alteration in their character which might considerably reduce their value, and if there is no time to wait for the principal's instructions, the agent shall, if the interests of the principal so require, sell the goods, following any rules laid down for similar sales by the law of the place where the goods are situated.

Article 19

The agent shall only be liable for the payment due by, or for carrying out obligations falling upon, those with whom he has concluded the contract of sale or purchase when he has made himself a guarantor.]

Article 20

The agent shall act at his own risk and responsibility if, without express or implied authority, he consents to give to a third party buyer or seller credit or time, the right to pay by instalments or any other facilities.

Article 21

The agent shall have the right to such remuneration and repayment of outlays as is provided, expressly or impliedly, by the terms of the agency contract [or by applicable usage]. Even where there is no such provision, the agent may recover outlays which he has reasonably incurred.

Article 22

When the agent has not received payment when due from the principal of his commission, disbursements or other sums due in respect of the agency contract, the agent:

- (a) may deduct these sums from any amount which he owes to the principal, and
- (b) may withhold delivery of goods or other things which he holds on behalf of the principal. In this situation, the agent may also sell the goods and retain the proceeds to account of the payments due to him, irrespective of the terms of the agency contract, but only after giving reasonable notice to the principal. He shall follow the rules, if any, prescribed for such sales by the law of the place where the goods are situated.

Article 23

Subject to any rights conferred on the agent by the preceding article, the fact that the goods are in the possession of an agent for the purposes of an agency contract shall not, of itself, affect rights as between principal and agent in the goods.

Article 24

Where negligently an agent fails to carry out his obligations to the principal he shall be liable to pay such compensation to the principal as will place the latter in the same position as he would have been in if the agent had fulfilled his obligations, and, where his failure is substantial:

(a) he shall forfeit any right to remuneration in respect of the transaction concerned; and

(b) in cases where the principal and third party are not directly bound by the contract of sale or purchase, the principal shall be released from his obligations to the agent resulting from that contract.

Chapter IV

RESULTS OF AN ACT CARRIED OUT BY THE AGENT ON BEHALF OF THE PRINCIPAL

Article 25

1. When the agent carries out a sale or a purchase on behalf of the principal within the scope of his authority, and when it is apparent that he is acting as an agent, the contract shall directly bind the principal and the other contracting party, except as provided in Article 26.

2. If the agent has acted without authority or has exceeded the limits of his authority, the contract shall not bind the principal and the third party unless:

(a) the principal has conducted himself in such a way that third parties may consider that the agent was authorized to conclude a transaction of that class; or

(b) the authority to enter into transactions of that class may reasonably be inferred from the position the agent holds with the consent of the principal.

3. A third party may not found upon an apparent authority conferred by a principal upon an agent when he knew or ought to have known that the agent had no authority or was exceeding his actual authority.

Article 26

Notwithstanding that an agent carries out a sale or purchase on behalf of a principal within the scope of his authority and that it is apparent that he is acting as agent, the contract shall not bind the principal, but the agent and the third party only, when the agent and the third party expressly or impliedly agree that there shall be no recourse by the third party against the principal or that the name of the principal shall not be disclosed.

Article 27

1. When an agent carries out a sale or purchase on behalf of a principal but without disclosing or allowing it to be inferred that he is acting on behalf of a principal, the sale or purchase shall be binding only upon the agent and the person with whom he contracts. Nevertheless,

(a) if it shall afterwards appear to the principal that the agent in concluding the contract was acting within the scope of an authority given to him by the principal, as soon as he has satisfied his outstanding obligations to the agent, the principal may himself exercise the agent's rights and claims against a third party seller or purchaser subject to all the defences which such third party may set up against the agent. As soon as he has received notice that the principal intends to exercise the rights and claims of the agent against him, a third party may no longer free himself from his obligations arising out of the contract by dealing with the agent;

(b) if it shall afterwards appear to the third party that the agent did not conclude the contract on his own behalf, the third party in case of non-fulfilment of the obligations owed to him by virtue of the contract of purchase or of sale, may himself exercise against the principal the rights and claims arising for his benefit from the contract of purchase or of sale, subject to the defences that the principal may raise against the agent. As soon as he has received notice that the third party intends to exercise against him the rights and claims arising for his benefit from the contract of purchase or of sale, the principal may no longer free himself from the obligations of which execution is required of him by the third party by dealing with the agent.

2. In the case where a default in the execution of the obligations arising from the contract of purchase or of sale for the benefit of a third party shall arise from the non-fulfilment of the obligations of the principal towards the agent, the agent shall communicate to the third party the name of the principal, unless it follows from the contract of purchase or of sale or from the circumstances at the time of its conclusion that the third party has waived such communication.

Article 28

1. An act carried out on behalf of another by a person acting without authority or having exceeded the limits of his authority shall, if ratified by the person in whose behalf it has been carried out, produce the same effects as if it had been carried out with authority.

2. Ratification is effective notwithstanding that the act itself could not have been effectively carried out at the time of ratification unless it affects any rights acquired by a bona fide third party.

3. If the act has been carried out on behalf of a corporation before its creation, ratification shall only be made effective if allowed by the law of the country governing its creation.

4. Ratification must comply with requirements as to the authorization laid down by Artículos 10 to 13 of the present Law.

5. The third party and the person with whom he has contracted as agent can agree to rescind the contract before it is brought to the notice of the person from whom ratification should have been sought.

6. The third party shall have the right to fix a reasonable time for ratification by the principal.

7. The third party may refuse to accept a partial ratification.

8. Ratification cannot be revoked.

9. The option to ratify passes to the personal representatives of the principal.

Article 29

1. A person who holds himself out to a third party to be an agent, but who acts without authority or who exceeds the limits of his authority, shall be liable to pay to the third party such compensation as will place the latter in the same position as he would have been in if he had not relied upon the agent's authority. such compensation as will place the latter in the same position as he would have been in if the agent had acted with authority or within the limits of his authority.

2. The agent shall not be liable if the third party knew or ought to have known that the agent had no authority or was exceeding the limits of his authority.

Chapter V

RELATIONS BETWEEN THE PRINCIPAL AND THE CREDITORS OF THE AGENT

Article 30

As against the principal or the third party or the owner of the goods, the creditors of an agent shall have only those rights in the goods that the agent himself would have against those persons.

Article 31

The provisions of the preceding articles shall apply if the thing forming the object of the contract of agency has lost its identity as a result of being mixed with other things held by the agent. In such case, competing claims will be established on the mass so constituted between persons who have contributed thereto and proportionately to the amount furnished by each one to that mass; in this competition preference shall be given to principals to the extent of the rights mentioned in the preceding articles and, in the case set out at Article, to purchasers.

Article 32

The rights which the contract of agency causes to arise for the benefit of the principal, may be exercised by him, in preference to other creditors of the agent, on the credits arising from the contract of purchase or of sale against third parties for the benefit of the agent.

Chapter VI

SUCCESSIVE AGENTS

Article 33

Where an agent has made a contract through a sub-agent, the relations between them shall be regulated by the present Law as if the agent were the principal of the sub-agent:

(a) where the two agents have their places of business, or in default thereof, their habitual residences, in the territories of different States; or

(b) where the present Law would otherwise apply.

Article 34

Where in an agency relationship governed by the present Law, the agent makes a contract through a sub-agent:

(a) the principal shall retain his rights against the agent;

(b) the principal may treat the sub-agent as his own agent;

(c) the third party shall possess against the principal those rights which he would have possessed if the contract had been concluded directly through the agent.

Article 35

Articles 33 and 34 shall apply to successive agents if more than two agents act as intermediaries in connection with a contract of sale or purchase.

Chapter VII

END OF AGENCY

Article 36

An agency contract is terminated when it has been fully performed by the parties or when they so agree.

Article 37

1. An agency contract is terminated, except as otherwise provided in article 44, by the death of the principal or, where the principal is not a natural person, by its dissolution.

2. It is also terminated, except as otherwise provided in article 44, on the bankruptcy of the principal or when he suffers a total loss of capacity.

3. When the principal has suffered only a partial loss of capacity, an agency contract shall not by that fact alone be terminated; but the powers of the agent shall be limited to those of the principal.

4. The acts of the agent subsequent to the principal's death, dissolution or lack of capacity, total or partial, shall continue to bind the principal's estate in relation to the agent, and to any person with whom he contracts, who is unaware of the death, dissolution or loss of capacity.

Article 38

Notwithstanding the death, incapacity or bankruptcy of the principal, the agent, unless otherwise instructed by the successors or representatives of the principal, shall continue to act as if the contract of agency has not been terminated where damage would otherwise be caused to the principal or to his successors or his estate.

Article 39

An agency contract is terminated :

- (a) by the death of the agent, or where the agent is not a natural person, by its dissolution;
- (b) when the agent loses that capacity which he had at the time he was granted authority; or
- (c) on the bankruptcy of the agent.

Article 40

1. An agency contract shall be terminated on the revocation or renunciation of the contract by the principal or agent, whether or not this is consistent with the terms of the contract. The party revoking or repudiating shall be liable to pay damages for breach of contract or for failure to give reasonable notice.

2. Any restriction in the scope of the contract by either party shall have a similar effect.

Article 41

A revocation, renunciation or restriction shall have effect upon a third party only from the time he has notice of it, except in the following cases :

(a) when the document creating or evidencing the agent's authority has been cancelled by a procedure of invalidation, effective under the law of the State where the agent conducts his business;

∩ (b) when the agent's authority arises solely from his position and he has left ∩ or has been removed from ∩ that position; ∩

∩ (c) when the agent's authority arises solely by reason of the registration or publication of an authorization, and the revocation, renunciation or restriction has been given similar publicity. ∩

Article 42

When the third party knows of the agent's authority only because the agent has made a declaration to that effect, revocation of that authority by the principal shall have effect in relation to the third party as soon as it has been brought to the notice of the agent, even though the third party is unaware of the revocation.

Article 43

The principal and agent shall take all reasonable steps to ensure that third parties are not prejudiced by the revocation or restriction of the agent's authority and shall be liable to such parties for any failure to do so.

Article 44

Where the principal has granted to the agent authority to carry out a transaction for the agent's benefit, or for the benefit of a third party, the agency contract may not be revoked or restricted by the principal and shall not be terminated by the death, incapacity or bankruptcy of the principal until the benefit for which the authority was conferred has been secured.

